

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File Number EB-02-DL-530
EICB-TV, LLC)	
Licensee of KUOT-CA in Oklahoma City, OK)	NAL/Acct. No.200432500005
Cedar Hill, Texas)	
)	FRN 0004-5420-31

FORFEITURE ORDER

Adopted: September 21, 2004

Released: September 23, 2004

By the Assistant Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) to EICB-TV, LLC (“EICB”), licensee of Class A television station KUOT-CA Oklahoma City, Oklahoma, for willful and repeated violation of Section 73.3526(c)(1) of the Commission's Rules (“Rules”).¹ The noted violations involve EICB’s failure to have available for public inspection all of the materials required to be kept in the station’s public inspection file.

2. On April 7, 2004, the Commission’s Dallas, Texas, Field Office (“Dallas Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to EICB for a forfeiture in the amount of ten thousand dollars (\$10,000).² EICB responded to the NAL on April 28, 2004.

II. BACKGROUND

3. On February 20, 2003, an agent from the Dallas Office inspected station KUOT-CA³ at its main studio located at Eagle Heights Church in Oklahoma City. The station’s public file was missing all required items except the station authorization and applications to the Commission.

¹ 47 C.F.R. § 73.3526(c) (1).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200432500005 (Enf. Bur., Dallas Office, released April 7, 2004).

³ Then KKCC-LP. The call sign was changed to KUOT-CA on October 2, 2003.

4. On August 19, 2003, an agent from the Dallas Office again inspected KUOT-CA's main studio. The public file was missing the following required items: issues/programs lists and records concerning commercial limits.

5. In its response to the *NAL*, EICB admits violating the public file requirement on February 20 and August 19, 2003, but asserts that its violations were not willful and that it is now in compliance. Additionally, EICB requests cancellation of the proposed monetary forfeiture on the basis of financial hardship and submits copies of its 2000, 2001, 2002 and 2003 federal income tax returns in support of its request.

III. DISCUSSION

6. The proposed forfeiture amount in this case is being assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Act requires that the Commission, in examining EICB's response, take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶

7. Section 73.3526(c)(1) of the Rules requires that licensees of commercial broadcast stations make a file available for public inspection at any time during regular business hours. The file must be maintained at the station's main studio⁷ and, for television stations, must contain the station's authorization, applications and related materials, citizen agreements, contour maps, ownership reports and related materials, political file, Equal Employment Opportunity file, the "Public and Broadcasting" manual, letters and e-mails from the public, material relating to FCC investigations or complaints, TV issues/program lists, records concerning commercial limits, local public notice announcements, and must-carry or retransmission consent election.⁸ On the basis of the FCC agent's investigation and EICB's admission, we conclude that, on February 20, 2003 and August 19, 2003, EICB did not have available for public inspection all of the materials required to be kept in KUOT-CA's public inspection file, in violation of Section 73.3526(c)(1) of the Rules.

8. EICB argues that it wanted to comply with the Commission's Rules and that its violations of Section 73.3526(c)(1) of the Rules were not willful. Section 312(f)(1) of the Act,⁹ which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ See 47 C.F.R. § 73.3526(b).

⁸ See 47 C.F.R. §§ 73.3526(a)(2) and 73.3526(e)(1) - (11), (13) and (15).

⁹ 47 U.S.C. § 312(f)(1)

‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). EICB’s response to the NAL indicates that, on August 19, 2003, EICB knew that its public file did not include all of the required items. We conclude, therefore, that EICB’s violation of Section 73.3526(c)(1) of the Rules was willful and, on the basis of the violation’s occurrence on two days, we conclude that it was also repeated.¹⁰

9. EICB’s post-notification corrective action does not mitigate its violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”¹¹

10. Our review of the three most recent federal income tax returns provided by EICB indicates that the proposed forfeiture amount should be reduced to \$2,000 because of EICB’s inability to pay a larger amount.

11. We have examined EICB’s response to the NAL pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that EICB willfully and repeatedly violated Section 73.3526 (c)(1) of the Rules and that reduction of the proposed \$10,000 monetary forfeiture to \$2,000 is warranted.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹² EICB-TV L.L.C. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand dollars (\$2,000) for willfully and repeatedly violating Section 73.3526(c)(1) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom,

¹⁰ As provided by 47 U.S.C. § 312(f)(2), a violation that occurs more than once is “repeated.” The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, *supra* at 4388 (1991).

¹¹ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVJ, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹³ 47 U.S.C. § 504(a).

Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

14. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by regular mail and Certified Mail Return Receipt Requested to EICB-TV, LLC, 406 Copeland Drive, Cedar Hill, Texas 75104.

FEDERAL COMMUNICATIONS COMMISSION

George R. Dillon
Assistant Chief, Enforcement Bureau

¹⁴ See 47 C.F.R. § 1.1914.